

UNITED STATES DISTRICT COURT - DISTRICT OF NEVADA

JOSE DECASTRO,

Plaintiff,

v.

EVAN MCKNIGHT, et al.,

Defendants.

Case No. 2:24-cv-00435-DJA

NOTICE AND MOTION FOR LEAVE TO FILE LATE OPPOSITION TO LAWRENCE
COUNTY DEFENDANTS' MOTION TO DISMISS (DOC. 19);

DECLARATION OF JOSE DECASTRO

Jose DeCastro

1258 Franklin

Santa Monica, California 90404

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Pro Se Plaintiff

Introduction and Purpose

Plaintiff Jose DeCastro respectfully submits this Notice and Motion for Leave to file a late opposition to the Lawrence County Defendants' Motion to Dismiss (Doc. 19). The purpose of

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BY: <u> </u>	<u> </u> DEPUTY

this filing is to request that the Court permit the late submission of Plaintiff's opposition or, in the alternative, to clarify the record and request that the Court construe Plaintiff's previously filed Sur-Reply and Motion for Leave as his substantive opposition to the motion. This request is made to ensure that the Court has a full and accurate record of Plaintiff's responses to the arguments raised by the Lawrence County Defendants and to promote the fair adjudication of this matter.

Background and Procedural History

On March 25, 2025, the Lawrence County Defendants filed their Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(3) and 12(b)(6) (Doc. 19). On April 14, 2025, Plaintiff moved for an extension of time to respond to this motion, which the Court granted on April 16, 2025, setting a new response deadline of May 12, 2025.

Plaintiff did not file a document specifically titled as an opposition to the Lawrence County Defendants' Motion to Dismiss by the May 12, 2025 deadline. Instead, Plaintiff subsequently filed a Sur-Reply in Opposition to Defendants' Reply in Support of Motion to Dismiss on May 13, 2025, and, after the Sur-Reply was initially stricken for lack of a motion, filed a Motion for Leave to File Sur-Reply on June 10, 2025, pursuant to Local Rule 7-2(b). These filings were intended to address the arguments raised in Defendants' Reply, including new assertions regarding res judicata and jurisdictional issues.

The Lawrence County Defendants have argued that, under Local Rule 7-2(d), Plaintiff's failure to file a timely opposition to their Motion to Dismiss constitutes consent to the granting of the motion, and have requested dismissal on that basis. Plaintiff now seeks leave to file a late

opposition or, in the alternative, requests that the Court construe the previously filed Sur-Reply and Motion for Leave as his substantive opposition to the motion.

Statement of Good Cause

Plaintiff respectfully submits that the failure to file a document specifically titled as an opposition to the Lawrence County Defendants' Motion to Dismiss by the May 12, 2025 deadline was inadvertent and not intended to delay these proceedings or prejudice any party. Moreover, Plaintiff's Sur-Reply directly addressed the substantive arguments in Defendants' motion, including res judicata, jurisdictional challenges, and the merits of the claims. This demonstrates that Plaintiff was not attempting to avoid the issues, but rather was actively engaging with the legal arguments presented.

As a pro se litigant, Plaintiff has made every effort to comply with the Court's orders and the applicable local rules, including seeking an extension of time to respond and promptly addressing the arguments raised by Defendants in subsequent filings.

Upon realizing that the Sur-Reply and Motion for Leave, which were timely filed, may not have been construed as a formal opposition to the Motion to Dismiss, Plaintiff took immediate steps to clarify the record and request appropriate relief. Plaintiff filed this Motion for Leave within [X days] of discovering the potential procedural issue, demonstrating diligence in seeking to cure any defect.

Plaintiff's filings were made in good faith and were intended to address the substantive issues raised by Defendants, including new arguments presented in their Reply, such as res judicata and jurisdictional matters.

No party will be prejudiced by permitting the late filing of an opposition or by construing the existing Sur-Reply and Motion for Leave as Plaintiff's substantive opposition. Plaintiff respectfully requests that, in light of his pro se status and the interests of justice, the Court exercise its discretion to allow the late filing or to consider the existing filings as the opposition to the Lawrence County Defendants' Motion to Dismiss.

Request for Relief

Plaintiff respectfully requests that the Court grant leave to file a late opposition to the Lawrence County Defendants' Motion to Dismiss (Doc. 19), pursuant to the Court's discretion under the local rules and in the interests of justice. In the alternative, Plaintiff requests that the Court construe the previously filed Sur-Reply and Motion for Leave as his substantive opposition to the Motion to Dismiss, given that these filings address the arguments raised by Defendants, including those first presented in their Reply.

Plaintiff submits that good cause exists for this request, as the failure to file a formal opposition by the deadline was inadvertent, not intended to delay proceedings, and has not prejudiced any party. Plaintiff has acted in good faith to address all substantive issues and has promptly responded to the Defendants' arguments as they arose. Allowing the late filing or construing the existing filings as the opposition will ensure that the matter is decided on its merits and will not result in unfair prejudice to any party.

Accordingly, Plaintiff respectfully asks that the Court exercise its discretion to permit the late opposition or, in the alternative, to consider the Sur-Reply and Motion for Leave as the operative opposition to the Lawrence County Defendants' Motion to Dismiss.

Legal Argument

The Court possesses broad discretion under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Nevada to permit late filings and to construe pleadings in the interest of justice, particularly where no party is prejudiced and the movant has acted in good faith.

I. Discretion Under Local Rule 7-2

Local Rule 7-2(b) establishes the time for filing oppositions to motions, while Local Rule 7-2(d) provides that the failure to file points and authorities in response to a motion (other than for summary judgment or attorney's fees) may be deemed consent to granting the motion. However, the rule does not mandate automatic dismissal; rather, it vests the Court with discretion to determine whether such consent should be implied or whether the circumstances warrant relief from strict compliance.

II. Authority to Excuse Procedural Defaults

Federal courts routinely recognize their authority to excuse procedural defaults where the interests of justice so require, especially for pro se litigants. The Ninth Circuit and this District have held that technical noncompliance with local rules may be excused where the record demonstrates good faith, lack of prejudice, and a desire to resolve matters on the merits. The Court may consider the substance of filings, even if not styled as a formal opposition, where those filings address the arguments raised in the underlying motion. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (pro se pleadings are held to less stringent standards than formal pleadings drafted by lawyers); *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (same).

III. No Prejudice and Good Cause

Here, Plaintiff's failure to file a document specifically titled as an opposition to the Lawrence County Defendants' Motion to Dismiss was inadvertent and promptly addressed upon discovery. Plaintiff has otherwise actively participated in the litigation, sought extensions in good faith, and filed substantive responses to the Defendants' arguments, including the Sur-Reply and Motion for Leave. The Lawrence County Defendants have not demonstrated any prejudice resulting from the timing or form of Plaintiff's filings.

IV. Resolution on the Merits

Courts favor resolving disputes on their merits rather than on procedural technicalities. Granting leave to file a late opposition, or construing the Sur-Reply and Motion for Leave as the operative opposition, will ensure that the Court considers all substantive arguments and that justice is served.

Accordingly, Plaintiff respectfully submits that the Court should exercise its discretion to grant the requested relief in the interests of fairness and judicial economy.

Declaration of Plaintiff

I, Jose DeCastro, declare as follows:

1. I am the Plaintiff in this action and am appearing pro se.
2. The facts set forth in the foregoing Notice and Motion for Leave to File Late Opposition to Lawrence County Defendants' Motion to Dismiss (Doc. 19) are true and correct to the best of my knowledge.
3. On March 25, 2025, the Lawrence County Defendants filed their Motion to Dismiss (Doc. 19). I requested and was granted an extension of time to respond, with a new deadline of May 12, 2025.
4. I did not file a document specifically titled as an opposition to the Lawrence County Defendants' Motion to Dismiss by the May 12, 2025 deadline. This omission was inadvertent and not intended to delay these proceedings or to prejudice any party.
5. I subsequently filed a Sur-Reply in Opposition to Defendants' Reply in Support of Motion to Dismiss on May 13, 2025, and, after the Sur-Reply was initially stricken, filed a Motion for Leave to File Sur-Reply on June 10, 2025, pursuant to Local Rule 7-2(b). These filings were made in good faith and were intended to address the substantive arguments raised by Defendants, including new matters presented in their Reply.
6. Upon learning that my Sur-Reply and Motion for Leave may not have been construed as a formal opposition to the Motion to Dismiss, I have taken immediate steps to clarify the record and request appropriate relief from the Court.

7. I make this declaration in good faith, and respectfully request that the Court grant leave to file a late opposition or, in the alternative, construe my Sur-Reply and Motion for Leave as my substantive opposition to the Lawrence County Defendants' Motion to Dismiss.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this ____ day of [Month], 2025, in Santa Monica, California.

Respectfully submitted,

/s/ Jose DeCastro

Jose DeCastro

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Pro Se Plaintiff

Conclusion and Prayer for Relief

For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to file a late opposition to the Lawrence County Defendants' Motion to Dismiss (Doc. 19), or, in the alternative, construe Plaintiff's previously filed Sur-Reply and Motion for Leave as his substantive opposition to that motion. Plaintiff submits that good cause exists for this relief, as the failure to file a formal opposition by the deadline was inadvertent, not intended to delay proceedings, and has not prejudiced any party. Granting this request will ensure that the matter is resolved on its merits and in the interests of justice.

Plaintiff respectfully prays that the Court grant the relief requested herein and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: July 3, 2025

/s/ Jose DeCastro

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Pro Se Plaintiff

CERTIFIED MAIL



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